

AMENDED IN SENATE SEPTEMBER 12, 2003

AMENDED IN SENATE SEPTEMBER 8, 2003

AMENDED IN SENATE JULY 17, 2003

AMENDED IN SENATE JUNE 30, 2003

AMENDED IN ASSEMBLY JUNE 2, 2003

AMENDED IN ASSEMBLY MARCH 28, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 496

Introduced by Assembly Member ~~Correa~~ Lowenthal
(Principal coauthor: Assembly Member Correa
(Principal coauthors: Senators Karnette and Perata)

February 14, 2003

~~An act to amend Sections 94739, 94802, 94901, 94905, and 94945 of, to amend and renumber Section 94740.1 of, and to add Sections 94735.2, 94735.3, 94740.3, and 94740.5 to, the Education Code, relating to private postsecondary education. An act to repeal and add Section 6385 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 496, as amended, ~~Correa~~ Lowenthal. ~~Private postsecondary education: Private Postsecondary and Vocational Education Reform Act of 1989: regionally accredited institutions~~ Sales and use taxes: exemptions: bunker fuel.

The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. That law provides various exemptions from that tax, including an exemption for the sale of tangible personal property to a common carrier, as provided.

This bill would additionally exempt, until 2014, the gross receipts from the sale of fuel and petroleum products to a water common carrier for immediate shipment outside this state for consumption in the conduct of its business as a common carrier after the first out-of-state destination, if specified conditions are met. This bill would require the Legislative Analyst's office to submit a report to the Governor and the Legislature that evaluates the economic impact of the exemption.

Counties and cities are authorized to impose local sales and use taxes in conformity with state sales and use taxes. Exemptions from state sales and use taxes enacted by the Legislature are incorporated into the local taxes.

Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse local agencies for sales and use tax revenues lost by them pursuant to this bill.

This bill would take effect immediately as a tax levy, but its operative date would depend on its effective date.

~~Existing law, known as the Private Postsecondary and Vocational Education Reform Act of 1989, generally sets minimum standards of instructional quality, ethical and business practices, health and safety, and fiscal responsibility for private postsecondary and vocational educational institutions, as defined. The act excludes from the definition of private postsecondary educational institutions subject to regulation under its provisions for-profit institutions accredited by the Accrediting Commission for Senior Colleges and Universities or the Accrediting Commission for Community and Junior Colleges of the Western Association of Schools and Colleges (WASC), if the institution exclusively confers degrees upon the completion of a course of study of 2 or more years. The act establishes the Bureau for Private Postsecondary and Vocational Education, which, among other things, is required to review and investigate all institutions, programs, and~~



~~courses of instruction approved under the act. Numerous terms are defined for the purposes of the act.~~

~~This bill would modify that definitional exclusion to exclude all for-profit institutions accredited by WASC.~~

~~The bill would define “major national accrediting agency,” “major nationally accredited institution,” “non-WASC regional accrediting agency,” and “non-WASC regionally accredited institution” for the purposes of the act.~~

~~The bill would require a major nationally accredited institution or a non-WASC regionally accredited institution to include, in its application to operate in this state, a copy of the certificate of accreditation issued by the major national accrediting agency or the non-WASC regional accrediting agency. The bill would require the bureau to determine that a major nationally accredited institution or a non-WASC regionally accredited institution meets prescribed requirements before granting the institution approval to issue degrees. The bill would require the bureau to include, in an annual report to the Legislature and the California Postsecondary Education Commission that is required under existing law, its findings and recommendations relative to institutions that have secured institutional or programmatic approval under this provision.~~

~~The bill would also make related technical changes.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no yes.~~

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 94735.2 is added to the Education Code~~
2 *SECTION 1. The Legislature finds and declares the*
3 *following:*

4 *(a) Because the state has reinstated a sales tax on bunker fuel,*
5 *the amount of petroleum coke produced in California will increase*
6 *substantially. Several million dollars that had annually been used*
7 *to purchase millions of gallons of bunker fuel in California will*
8 *instead be invested in other states and nations along the west coast*
9 *of North America.*

10 *(b) Adding a sales tax to bunker fuels has a demonstrable*
11 *negative effect on California’s trade industry and sectors of the*
12 *economy that rely on trade. Similarly, increasing taxes on bunker*
13 *fuel results in environmental and health repercussions.*



1 (c) Petroleum coke is a dry, dusty, residual product created
2 during the final stages of the oil refining process. It is used as an
3 alternative energy source in many poor countries. After petroleum
4 is refined for automobile fuel, truck fuel, and jet fuel, it is further
5 refined into a lower grade fuel used primarily for kerosene and
6 bunker fuel. Unused bunker fuel is further refined into petroleum
7 coke.

8 (d) Samples of petroleum coke dust have turned up high levels
9 of the potentially carcinogenic chemicals chrysene and
10 vanadium. When airborne, petroleum coke can travel alone or
11 attach to other harmful particulate matter such as diesel fuel.
12 Although various storage techniques can limit airborne movement
13 of petroleum coke dust, most movement occurs when the dust is
14 moved by truck.

15 SEC. 2. Section 6385 of the Revenue and Taxation Code is
16 repealed.

17 ~~6385. (a) There are exempted from the computation of the~~
18 ~~amount of the sales tax the gross receipts from the sale of tangible~~
19 ~~personal property, other than fuel and petroleum products, to a~~
20 ~~common carrier, shipped by the seller via the purchasing carrier's~~
21 ~~facilities under a bill of lading whether the freight is paid in~~
22 ~~advance, or the shipment is made freight charges collect, to a point~~
23 ~~outside this state and the property is actually transported to the~~
24 ~~out-of-state destination for use by the carrier in the conduct of its~~
25 ~~business as a common carrier.~~

26 ~~(b) There are exempted from the computation of the amount of~~
27 ~~the sales tax the gross receipts from the sale of tangible personal~~
28 ~~property, other than aircraft fuel and petroleum products,~~
29 ~~purchased by a foreign air carrier and transported by the foreign~~
30 ~~air carrier's facilities to a foreign destination for use by the air~~
31 ~~carrier in the conduct of its business as a common carrier by air of~~
32 ~~persons or property. To qualify for this exemption, the foreign air~~
33 ~~carrier shall furnish to the seller a certificate in writing that the~~
34 ~~property shall be transported and used in the manner required in~~
35 ~~this subdivision. The certificate shall be substantially in the form~~
36 ~~prescribed by the board. A seller is not liable for the sales tax if the~~
37 ~~seller accepts the certificate in good faith. If the seller does not~~
38 ~~have the certificate at the time the board requests the seller to~~
39 ~~submit the certificate to the board, the seller shall be given a~~
40 ~~reasonable time to request the foreign air carrier to provide the~~

~~seller with the certificate. The foreign air carrier shall maintain records in this state, such as a copy of a bill of lading, and air waybill or cargo manifest, documenting its transportation of the tangible personal property to a foreign destination.~~

~~(e) "Common carrier," as used in this section, with respect to water transportation, shall be deemed to include any vessel engaged, for compensation, in transporting persons or property in interstate or foreign commerce.~~

~~(d) "Foreign air carrier," as used in this section, means a foreign air carrier as defined in Section 1301 of Title 49 of the United States Code.~~

~~(e) Pursuant to subdivisions (a) and (b), any use of the property by the purchasing carrier, other than that incident to the delivery of the property to the carrier and the transportation of the property by the carrier to an out-of-state destination and subsequent use in the conduct of its business as a common carrier, or a failure of the carrier to document its transporting the property to an out-of-state destination, shall subject the carrier to liability for payment of sales tax as if it were a retailer making a retail sale of the property at the time of that use or failure, and the sales price of the property to it shall be deemed to be the gross receipts from the retail sale.~~

~~(f) This section shall become operative on January 1, 2003.~~

SEC. 3. Section 6385 is added to the Revenue and Taxation Code, to read:

6385. (a) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property, other than fuel and petroleum products, to a common carrier, shipped by the seller via the purchasing carrier's facilities under a bill of lading whether the freight is paid in advance, or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common carrier.

(b) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property, other than aircraft fuel and petroleum products, purchased by a foreign air carrier and transported by the foreign air carrier's facilities to a foreign destination for use by the air carrier in the conduct of its business as a common carrier by air of persons or property. To qualify for this exemption, the foreign

1 air carrier shall furnish to the seller a certificate in writing that the
2 property shall be transported and used in the manner required in
3 this subdivision. The certificate shall be substantially in the form
4 prescribed by the board. A seller is not liable for the sales tax if the
5 seller accepts the certificate in good faith. If the seller does not
6 have the certificate at the time the board requests the seller to
7 submit the certificate to the board, the seller shall be given a
8 reasonable time to request the foreign air carrier to provide the
9 seller with the certificate. The foreign air carrier shall maintain
10 records in this state, such as a copy of a bill of lading, an air
11 waybill, or cargo manifest, documenting its transportation of the
12 tangible personal property to a foreign destination.

13 (c) There are exempted from the computation of the amount of
14 the sales tax the gross receipts from the sale of fuel and petroleum
15 products to a water common carrier, for immediate shipment
16 outside this state for consumption in the conduct of its business as
17 a common carrier after the first out-of-state destination. To qualify
18 for the exemption the common carrier shall furnish to the seller an
19 exemption certificate in writing stating the quantity of fuel and
20 petroleum products claimed as exempt which is to be consumed
21 after reaching the first out-of-state destination. That certificate
22 shall bear the purchaser's valid seller's permit number or valid
23 fuel exemption registration number and shall be substantially in
24 the form prescribed by the board. Acceptance in good faith of that
25 certificate shall relieve the seller from liability for the sales tax.

26 (d) "First out-of-state destination," as used in this section,
27 means the first point reached outside this state by a common
28 carrier in the conduct of its business as a common carrier at which
29 cargo or passengers are loaded or discharged, cargo containers
30 are added or removed, fuel is bunkered, or docking fees are
31 charged. "First out-of-state destination," as used in this section,
32 also includes the entry point of the Panama Canal when the carrier
33 is only transiting the canal in the conduct of its business as a
34 common carrier.

35 (e) "Common carrier," as used in this section, with respect to
36 water transportation, shall be deemed to include any vessel
37 engaged, for compensation, in transporting persons or property in
38 interstate or foreign commerce.



1 (f) “Foreign air carrier,” as used in this section, means a
2 foreign air carrier as defined in Section 40102 of Title 49 of the
3 United States Code.

4 (g) “Immediate shipment,” as used in this section, means that
5 the delivery of the fuel and petroleum products by the seller is
6 directly into a ship for transportation outside this state and not for
7 storage by the purchaser or any third party.

8 (h) Any common carrier claiming exemption under subdivision
9 (c) who is not required to hold a valid seller’s permit shall be
10 required to register with the board and obtain a fuel exemption
11 registration number and shall be required to file returns as the
12 board may prescribe if either the board notifies the carrier that
13 returns must be filed or the carrier is liable for taxes based upon
14 consumption of fuel erroneously claimed as exempt under this
15 section. A common carrier required to hold a fuel exemption
16 registration number shall be subject to all applicable provisions of
17 this part, Part 1.5 (commencing with Section 7200), and Part 1.6
18 (commencing with Section 7251).

19 (i) A common carrier claiming an exemption under subdivision
20 (c), upon request, shall make available to the board records,
21 including, but not limited to, a copy of a log abstract or a cargo
22 manifest, documenting its transportation of the fuel or petroleum
23 product to an out-of-state destination and the amount claimed as
24 exempt. If the carrier fails to provide these records upon request,
25 the board may revoke the carrier’s fuel exemption registration
26 number.

27 (j) The board may require any carrier claiming an exemption
28 under this section and required to obtain a fuel exemption
29 registration number to place with it that security as the board may
30 determine pursuant to Section 6701.

31 (k) Pursuant to subdivisions (a), (b), and (c), any use of the
32 property by the purchasing carrier, other than that incident to the
33 delivery of the property to the carrier and the transportation of the
34 property by the carrier to the first out-of-state destination and
35 subsequent use in the conduct of its business as a common carrier,
36 or a failure of the carrier to document its transporting the property
37 to the first out-of-state destination, shall subject the carrier to
38 liability for payment of sales tax as if it were a retailer making a
39 retail sale of the property at the time of that use or failure, and the

1 sales price of the property to it shall be deemed to be the gross
2 receipts from the retail sale.

3 (l) On or before December 31, 2005, the Legislative Analyst's
4 office (LAO) shall submit a report to the Governor and the
5 Legislature that evaluates the economic impact of the partial sales
6 tax exemption regarding bunker fuel.

7 (m) This section shall remain in effect only until January 1,
8 2014, and as of that date is repealed.

9 SEC. 4. Section 6385 is added to the Revenue and Taxation
10 Code, to read:

11 6385. (a) There are exempted from the computation of the
12 amount of the sales tax the gross receipts from the sale of tangible
13 personal property, other than fuel and petroleum products, to a
14 common carrier, shipped by the seller via the purchasing carrier's
15 facilities under a bill of lading whether the freight is paid in
16 advance, or the shipment is made freight charges collect, to a point
17 outside this state and the property is actually transported to the
18 out-of-state destination for use by the carrier in the conduct of its
19 business as a common carrier.

20 (b) There are exempted from the computation of the amount of
21 the sales tax the gross receipts from the sale of tangible personal
22 property, other than aircraft fuel and petroleum products,
23 purchased by a foreign air carrier and transported by the foreign
24 air carrier's facilities to a foreign destination for use by the air
25 carrier in the conduct of its business as a common carrier by air
26 of persons or property. To qualify for this exemption, the foreign
27 air carrier shall furnish to the seller a certificate in writing that the
28 property shall be transported and used in the manner required in
29 this subdivision. The certificate shall be substantially in the form
30 prescribed by the board. A seller is not liable for the sales tax if the
31 seller accepts the certificate in good faith. If the seller does not
32 have the certificate at the time the board requests the seller to
33 submit the certificate to the board, the seller shall be given a
34 reasonable time to request the foreign air carrier to provide the
35 seller with the certificate. The foreign air carrier shall maintain
36 records in this state, such as a copy of a bill of lading, an air
37 waybill, or cargo manifest, documenting its transportation of the
38 tangible personal property to a foreign destination.

39 (c) "Common carrier," as used in this section, with respect to
40 water transportation, shall be deemed to include any vessel

1 engaged, for compensation, in transporting persons or property in
2 interstate or foreign commerce.

3 (d) "Foreign air carrier," as used in this section, means a
4 foreign air carrier as defined in Section 40102 of Title 49 of the
5 United States Code.

6 (e) Pursuant to subdivisions (a) and (b), any use of the property
7 by the purchasing carrier, other than that incident to the delivery
8 of the property to the carrier and the transportation of the property
9 by the carrier to an out-of-state destination and subsequent use in
10 the conduct of its business as a common carrier, or a failure of the
11 carrier to document its transporting the property to an out-of-state
12 destination, shall subject the carrier to liability for payment of
13 sales tax as if it were a retailer making a retail sale of the property
14 at the time of that use or failure, and the sales price of the property
15 to it shall be deemed to be the gross receipts from the retail sale.

16 (f) This section shall become operative on January 1, 2014.

17 SEC. 5. Notwithstanding Section 2230 of the Revenue and
18 Taxation Code, no appropriation is made by this act and the state
19 shall not reimburse any local agency for any sales and use tax
20 revenues lost by it under this act.

21 SEC. 6. This act provides for a tax levy within the meaning of
22 Article IV of the Constitution and shall go into immediate effect.
23 However, the provisions of this act shall become operative on the
24 first day of the first calendar month that follows the effective date
25 of this act.

26
27
28 **All matter omitted in this version of the**
29 **bill appears in the bill as amended in the**
30 **Senate, September 8, 2003 (JR 11)**
31
32